

REMARKS

Claims 22-32 are pending in this application. By this Amendment, claims 1-21 are canceled without prejudice or disclaimer, and new claims 22-31 are added. No new matter is added. Claims 1-21 have been canceled to be pursued in a Continuation application. Support for the claims can be found throughout the specification, including the original claims, and the drawings. Reconsideration in view of the above amendments and following remarks is respectfully requested.

The Patent Office issued a first Office Action for the above-identified application on October 6, 2003, in which the Examiner rejected claims 1-21 under 35 U.S.C. §102(e) as being anticipated by Smith et al. (hereinafter “Smith”), U.S. Patent No. 6,223,183. The Smith reference was filed on January 29, 2000, after the filing date of the present application, which was filed on January 28, 2000. However, the Smith reference claims priority to a provisional application (hereinafter “Smith provisional application”) filed on January 29, 1999. Because the Patent Office did not provide Applicant with a copy of the Smith provisional application, Applicant’s representative was unable to determine whether Smith was a proper reference.

Applicant’s representative contacted the Examiner on December 18, 2003 to discuss the issue and to request a copy of the Smith provisional application. The Examiner contacted Applicant’s representative on December 19, 2003 and indicated that Applicant should file a response to the outstanding Office Action, asserting that the Smith patent does not have a U.S.

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effective filing date prior to the U.S. filing date of the present application. Applicant's representative did as the Examiner instructed.

The Patent Office issued a second Office Action on March 26, 2004, which was improperly made Final. However, no copy of the Smith provisional application was enclosed therewith. Numerous telephone calls were made to the Examiner requesting a copy of the Smith provisional application. Applicant's representative also attempted to obtain a copy of the Smith provisional application independent of the Examiner, that is, from a document service company. However, the document service company determined that the Smith provisional application was unavailable.

After Applicant's representative again contacted the Examiner, the Patent Office issued a substitute Office Action, still improperly made Final, on August 6, 2004. However, again the Patent Office failed to forward to Applicant a copy of the Smith provisional application. After several additional telephone calls to the Patent Office, the Examiner's Supervisor provided Applicant with a copy of the Smith provisional application on August 20, 2004. Until that date, Applicant's representative was unable to determine whether Smith was a proper reference. Accordingly, it is respectfully submitted that the previous Office Action(s) dated March 26, 2004 and August 6, 2004 were improperly made Final, and thus the finality of these Office Action(s) should be withdrawn.

Further, entry of the amended claims is proper under 37 C.F.R. §1.116 since the amendments: (1) place the application in condition for allowance for the reasons discussed

herein; (2) do not raise any new issues requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution without incorporating additional subject matter; (3) satisfy a requirement of form asserted in the previous Office Action; and/or (4) place the application in better form for appeal, if necessary. Entry is thus requested.

The Examiner is thanked for the indication that claims 3, 6, 10-12, and 19-21 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 3, 6, 10, and 19-20 have been substantially rewritten in independent form as new claims 22-23, 27, and 30-31. Accordingly, these claims should be in condition for allowance, along with claims 24-26, 28-29, and 32, which depend respectively from claims 23, 27, and 31.

The Office Action rejected claims 1-2, 4-5, 7-9, and 13-18 under 35 U.S.C. §102(e) as being anticipated by Smith et al. (hereinafter “Smith”), U.S. Patent No. 6,233,183. Rejected claims 1-2, 4-5, 7-9, and 13-18, as well as objected to claims 3, 6, 10-12, and 19-21 have been canceled to be pursued in a Continuation application. Accordingly, the rejection is moot and should be withdrawn.

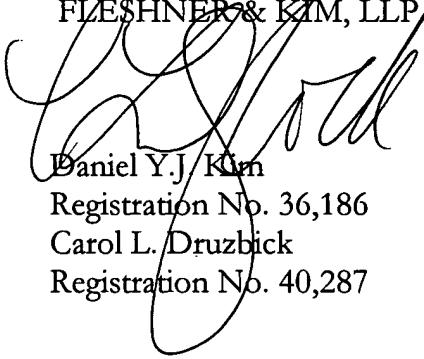
In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, Carol L. Druzbick, at the telephone number listed below.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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